Hepting et al v. AT&T Corp. et al Doc. 17

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T CORP., et al. Defendants.	No.C-06-0672-VRW CLASS ACTION [PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION The Hon. Vaughn R. Walker, Chief Judge

Dockets.Justia.com

This matter came on for hearing before the Court on Plaintiffs' motion for a preliminary injunction. Having given full consideration to all of Plaintiffs' papers, evidence, and the relevant authorities, all of Defendants' responses thereto, and the oral presentations of counsel, and good cause appearing, in accordance with Federal Rule of Civil Procedure 65(b), it is HEREBY ORDERED as follows:

1. Plaintiffs' motion for preliminary injunction is GRANTED. Plaintiffs have demonstrated: (i) a likelihood of success on the merits of their Title III and Fourth Amendment claims, (ii) irreparable harm if they are not granted a preliminary injunction, (iii) the balance of hardships tipping in their favor, (iv) and the public interest favors the interim relief sought in their application, sufficient to merit and constitute good cause for the issuance of a Preliminary Injunction Order as more particularly described herein.

2. Defendants, their officers, agents, servants, employees, attorneys, parent, subsidiary or related entity, any person acting for, with, by, through or under them, and any person in active concert or participation with them having actual notice of this Order by personal service or otherwise, and each of them, shall be immediately preliminarily enjoined and restrained during the pendency of this action from facilitating the interception, use, or disclosure of its customers' communications by or to the United States Government except pursuant to a court order or a legally valid certification by the Attorney General of the United States for short-term, emergency circumstances and lasting no longer than 48 or 72 hours as specifically provided in 18 U.S.C. §2511(2)(a)(ii) (permitting emergency surveillance under Title III and FISA), 18 U.S.C. §2518(7) (Title III emergency surveillance for no more than 48 hours), and 50 U.S.C. §1805(f) (FISA emergency surveillance for no more than 72 hours).

3. Defendants shall file with the Court and serve upon Plaintiff's counsel within thirty days of the entry of this Order of Preliminary Injunction an affidavit or declaration attesting to and detailing Defendants' compliance with it.

4. No bond is required. The balance of hardships favors Plaintiffs, who are experiencing harm to fundamental rights guaranteed them by the Constitution, while Defendants

do not face a likelihood of financial or other harm from complying with this injunction. *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), *see also Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

* * *

O R D E R

IT IS SO ORDERED.

DATED: ______________________

____
THE HONORABLE VAUGHN R. WALKER
CHIEF UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via FedEx to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ REED R. KATHREIN
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